THE APPEAL COMMISSION

THE WORKERS COMPENSATION ACT OF MANITOBA

2007

APPEAL COMMISSION

&

MEDICAL REVIEW PANEL

ANNUAL REPORT

Letter to the Minister

The Honourable Nancy Allan
Minister Responsible for *The Workers Compensation Act*
Room 317, Legislative Building
Winnipeg, Manitoba
R3C 0V8

Dear Minister:

I am pleased to present our 2007 Annual Report in accordance with the provisions of *The Workers Compensation Act*. This report covers the twelve month period from January 1, 2007 to December 31, 2007.

Respectfully submitted,

Alan Scramstad

Alan Scramstad
Chief Appeal Commissioner

Introduction

This report outlines the activities and statistics for both the Appeal Commission and Medical Review Panels for the period January 1, 2007 to December 31, 2007 inclusive.

The Appeal Commission is the final level of decision making in the workers compensation appeal structure in Manitoba. The Appeal Commission has exclusive jurisdiction to hear and decide appeals that arise from decisions made by the Workers Compensation Board (WCB). The Appeal Commission is separate and independent from the WCB, ensuring that issues from workers and employers are heard by an impartial panel.

The Appeal Commission consists of full and part-time appeal commissioners who are appointed by the Lieutenant Governor in Council for specific terms.

Medical Review Panels are established under *The Workers Compensation Act* (the Act) as a separate and independent process from the WCB and the Appeal Commission. Medical Review Panels allow questions to be asked of an independent panel of medical experts and an impartial medical opinion obtained on a worker's claim. The findings of a Medical Review Panel are considered evidentiary in nature and are not binding upon the WCB or Appeal Commission.

The Minister responsible for the Act appoints the Medical Review Panel Chair and Alternate Chair. The independence of the Chairs, and the ability of the employer and worker to select physicians who have not previously treated the worker to sit on a panel, allows for an impartial medical opinion.

The Office of the Registrar is responsible for providing administrative support to both the Appeal Commission and Medical Review Panels.

In keeping with their independence, the Appeal Commission and Medical Review Panel activities and statistics are reported separately from the WCB.

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Mission and Values

MISSION STATEMENT

To ensure workers and employers continue to receive a full and impartial hearing of appeals in accordance with fairness and the rules of natural justice and that decisions of the Appeal Commission are a fair reflection of the facts of the case and the governing legislation.

VALUES

Quality Assurance

The Appeal Commission maintains a consistent and high level of professional conduct, knowledgeable decision making, and accountability, while respecting differing and shared values and perspectives.

Public Integrity

The Appeal Commission is, and is seen to be, an independent body with integrity and a rational decision making process.

Responsive to Change

The Appeal Commission evolves in a proactive and creative manner by assuring a process of consultation and consensus around desired change.

Interdependence

All appeal commissioners are committed to a high standard of professionalism in their duties to conduct fair and impartial hearings under *The Workers Compensation Act* and its regulations. As well as their individual responsibilities to become knowledgeable in the matters before them, the commissioners have individual and collective responsibilities to one another to ensure an atmosphere of mutual respect, tolerance of individual differences and opinions, freedom from pre-determined bias and a commitment to look for objective truth and sound decision making.

Respectful Work Environment

Appeal commissioners interact with staff and colleagues in a manner which promotes mutual respect as well as clarity and understanding of respective roles.

A Message from the Chief Appeal Commissioner

I am pleased to present the annual report of the Appeal Commission for the year 2007.

Fairness in its processes, hearings and decisions is the primary goal of the Appeal Commission. This goal is reflected in our mission. Fairness is expected by our stakeholders and required by our statute. The Appeal Commission, individual commissioners and staff strive at all times to meet this commitment.

The Appeal Commission plays an important role in Manitoba's workers compensation and administrative justice systems. The Appeal Commission is the final appeal body under *The Workers Compensation Act* (the Act). It provides an independent forum for the resolution of concerns for persons who are not satisfied with the decisions of the Workers Compensation Board (WCB). It also serves as the final appeal body under *The Victims' Bill of Rights* and the *Government Employees Compensation Act* for federal government employees working in Manitoba.

This report contains statistics which detail the work of the Appeal Commission over the past year. There was a slight decrease in case volumes in 2007. This decrease follows four consecutive annual increases in case volumes.

The Appeal Commission continues to participate as a member in the Manitoba Council of Administrative Tribunals (MCAT). This not-for-profit organization was established to facilitate the sharing of information, expertise and experience amongst Manitoba's administrative tribunals. Appeal commissioners and staff participated in the 2007 annual conference, staff sessions and the annual lecture by Mr. Justice Marshall Rothstein of the Supreme Court of Canada. Peter J. Wiebe, Registrar of the Appeal Commission and I were elected to the Board of Directors of MCAT for 2007-2008. In addition I was appointed President for 2007-2008.

Appeal commissioners and staff also participated in a variety of continuing education seminars and conferences which serve to develop and maintain skills and assist appeal commissioners in dealing with complicated factual, legal and medical issues which arise during appeals. Of particular note is that the Appeal Commission hosted representatives of the Office of the Ombudsman for an educational seminar and discussion on the application of privacy laws by administrative tribunals.

The Appeal Commission operates with a system of appointed full and part-time appeal commissioners. Timely and competent appointments are essential to the effective operation of the Appeal Commission. I would like to thank the Minister for her assistance and cooperation in assuring that timely and competent appointments are made.

In September 2007, Lee Ann Martin was appointed to the Provincial Court of Manitoba and resigned from her position with the Appeal Commission. Lee Ann served as a full-time presiding officer and commissioner representative of the public interest since January 2006. During this time Lee Ann made a huge contribution to the Appeal Commission. Her professionalism and integrity were recognized by all who dealt with her. We thank her for her service to the workers compensation system and wish her the best in her judicial career.

Jane MacKay, a part-time appeal commissioner, was appointed to the Board of Directors of the WCB in October 2007. Jane had served at the Appeal Commission for over seven years, and gained experience that will serve her well in her new position. We thank Jane for her contribution to the Appeal Commission.

Lindy Choy was appointed to serve as a full-time presiding officer and commissioner representative of the public interest and will commence her duties in early 2008.

In addition, Allan Finkel, a full-time representative of employers, was re-appointed for a further three year term. Mr. Finkel has served as an appeal commissioner since 1998.

As Chief Appeal Commissioner, I appreciate the qualifications, skills and commitment of the commissioners upon whom the Appeal Commission relies for its successful operation.

Finally I wish to recognize the dedicated and competent staff in the Office of the Registrar. Their assistance and support are essential to the Appeal Commission's successful operation.

I wish to thank all the commissioners and staff for their commitment and diligence in serving the Appeal Commission and the workers and employers of Manitoba.

Sincerely,

Alan Scramstad

About the Appeal Commission

The Appeal Commission was established by legislative amendment to *The Workers Compensation Act* (the Act) in July 1990. The Appeal Commission is the final level of appeal in the workers compensation system. The Appeal Commission operates separately and independently from the WCB and is solely responsible for hearing all appeals from workers and employers concerning WCB Review Office or Assessment Committee decisions.

The full and part-time appeal commissioners are appointed by the Lieutenant Governor in Council for specific terms. The Act requires that the Appeal Commission consist of one or more appeal commissioners representing the public interest, one of whom is designated as Chief Appeal Commissioner, and one or more appeal commissioners representing workers and employers covered under the Act. The Chief Appeal Commissioner is responsible for the operation and conduct of matters relating to the Appeal Commission as established by the Act.

The Appeal Commission's conduct is governed by Regulation 279/91, *Appeal Commission Rules of Procedure*. The Rules of Procedure establish the responsibilities of the Chief Appeal Commissioner, the Registrar and the appeal panels to ensure that the integrity of the appeal system is protected and maintained.

Appeals are heard by panels of three commissioners, representing public, worker and employer interests, respectively. The commissioner representing the public interest is the presiding officer of the panel and is responsible for the conduct of the hearing/review and panel meetings.

Hearings and reviews are conducted in accordance with the rules of natural justice and procedural fairness. All parties to an appeal (i.e. the employer, worker and their representatives) are given an equal opportunity to present their case.

The Appeal Commission is a non-adversarial enquiry forum where parties with a direct interest in a matter provide oral or written evidence. An appeal panel has the ability to ask questions or obtain additional evidence which ensures that the panel has all the information necessary to reach a fair decision.

An appeal panel may hear witnesses from either or both parties and may subpoena witnesses or evidence that will assist the panel in reaching a decision. A party with a direct interest may appear before the panel to provide evidence or in some cases, ask the panel to conduct a review of the file which would not require the attendance of any party.

The Appeal Commission also acts as the final level of appeal for claims from victims of crime filed under the provisions of *The Criminal Injuries Compensation Act* and *The Victims' Bill of Rights*.

Method of Appeal

Appellants can request a file review or oral hearing, however the Chief Appeal Commissioner or an appeal panel addressing an appeal have the final authority to determine the most appropriate method for an appeal.

FILE REVIEW

An appeal can be decided by a file review if all the issues are easy to understand based on the file documents. The panel reaches a decision after it conducts a full review of the file documentation and any evidence submitted in writing by the parties with a direct interest. If an appeal is decided by a file review, interested parties do not have to appear in person before the appeal panel.

Some examples of appeals commonly decided by file review include:

- most assessment appeals
- factual matters such as the level of average earnings
- applications for an increase in permanent partial impairment where no wage loss is involved
- payment of medical aid/travel expenses
- appeals where the facts of the case are not in dispute

ORAL HEARING

Oral hearings are the most common appeal forums, and they are where the more complex appeals are usually decided. The party requesting the hearing must appear in person to present the appeal to the panel verbally, although the appeal can be supported by a written submission. In some instances a party may be allowed to participate via teleconference. Witnesses may attend in support of the appeal, so long as the Appeal Commission is advised in advance that they will be attending.

Some examples of appeals decided by an oral hearing are:

- where additional evidence is to be presented
- where there is a fatality
- where serious injury has occurred
- where an occupational disease is involved
- where the decision may have an important impact on how WCB policy is interpreted or applied
- where the facts are in dispute

General Hearing/Review Information

- Hearings and reviews are scheduled as soon as the parties are ready to proceed.
- A worker's or an employer's access to file information is subject to certain restrictions contained in the Act. File access generally takes up to six weeks, but can be longer if objections to the release of information are received.
- Any evidence concerning an appeal must be provided to the Appeal Commission at least five business days before the review or hearing.
- A decision will be made within 60 days of the completion of the hearing or review.

AFTER AN APPEAL

The Appeal Commission cannot clarify or change its decision once it has been made, except to correct typographical errors. The panel is unable to provide any further reasons or explanations for its decision, and cannot consider further arguments or submissions by the parties.

Once a decision has been made, there are limited remedies available to the parties under the Act. These remedies are:

1. Under Section 60.9 of the Act, if a party thinks the panel has acted outside its authority or has erred in applying the Act, Regulations or WCB policy, the party can approach the Board of Directors of the WCB and ask them to review the decision. The party must identify the error made by the panel. Should the Board of Directors consider that an error has been made, they may order that the appeal be re-heard.

2. Under Section 60.10 of the Act, if a party has new evidence which is substantial and material to the decision, they may apply to the Chief Appeal Commissioner and request reconsideration of the decision. The information must not have existed at the time of the original hearing, or been known to the applicant and also could not have been discovered through the exercise of due diligence. If the Chief Appeal Commissioner decides that the evidence meets the reconsideration provisions of the Act, a new hearing on the matter will be ordered. The Chief Appeal Commissioner is unable to consider further arguments about the evidence that was before the original panel.

The Appeal Commissioners

THE FULL-TIME APPEAL COMMISSIONERS

The Chief Appeal Commissioner and full and part-time commissioners representing workers, employers and the public interest are appointed by the Lieutenant Governor in Council.

As at December 31, 2007, there were three full-time commissioners:

Allan Finkel, Appeal Commissioner (Employers)
Margaret Day, Appeal Commissioner (Workers)
Alan Scramstad, Chief Appeal Commissioner (Public Interest)

The other full-time Public Interest position was vacant as at December 31, 2007.

THE PART-TIME APPEAL COMMISSIONERS

As at December 31, 2007, the Appeal Commission had eleven part-time appeal commissioners, four representing the public interest, four representing workers and three representing employers. The services of the part-time commissioners are used when full-time commissioners are in conflict on a case, for vacation relief, when workloads increase and to maintain their level of expertise.

PUBLIC INTEREST	REPRESENTING WORKERS	REPRESENTING EMPLOYERS
Mira Thow	Bob Malazdrewich	Ron Koslowsky
Sherri Walsh	Bill Leake	Margaret Bencharski
Byron Williams	Linda Butler	Barrie Simoneau
Kristin Dangerfield	Grant Ogonowski	

Highlights

- Alan Scramstad, Chief Appeal Commissioner, and Peter J. Wiebe, Registrar, were elected to the Board of Directors of the Manitoba Council of Administrative Tribunals (MCAT). Alan was also elected as President of MCAT.
- Alan Scramstad, Chief Appeal Commissioner, chaired the workshop "Receiving and Assessing Evidence During Administrative Hearings" at MCAT's 2nd Annual Conference.
- Allan Finkel, full-time commissioner representing employers, and Lee Ann Martin, full-time commissioner representing the public interest, were panelists on the workshop "Managing Perceptions of Bias During a Hearing and Caucus" at MCAT's 2nd Annual Conference.
- Peter J. Wiebe, Registrar, was co-organizer of a training session held for staff of administrative tribunals on access and privacy rights and responsibilities under *The Freedom of Information and Protection of Privacy Act*.
- In September, Lee Ann Martin, full-time commissioner representing the public interest, was appointed to the Provincial Court of Manitoba.
- In October, Jane MacKay, part-time commissioner representing employers, was appointed to the Board of Directors of the Workers Compensation Board and ceased to be a part-time commissioner.

Commissioner Workshops (continuing education)

Full and part-time appeal commissioners attend workshops throughout the year on topics related to workers compensation and administrative tribunals. As part of their training, workshops were held in 2007 on:

- Neurologic Conditions of the Upper Limb
- Access and Privacy Legislation
- An Introduction to the Workers Compensation Board's Pain Management Unit: Assessment and Management of Chronic Pain & Associated Psychological Conditions
- Obligation to Re-employ

In addition to the above workshops, commissioners participated in the following external training:

- Manitoba Council of Administrative Tribunals sessions:
  - "2nd Annual Conference"
  - "Decision Writing"
  - "Impartiality, Bias and Independence of Administrative Tribunals"
- Council of Canadian Administrative Tribunals conference:
  - "Administrative Justice Without Borders"
- Canadian Bar Association conference:
  - "Getting Down to Brass Tacks: More Than Just Standards of Review"

Appeal Commission Statistics

WORKERS COMPENSATION STATISTICS

TOTAL APPEALS	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals carried forward from previous year	41	32	38
Hearings held (by appeal)	130	168	156
Reviews held (by appeal)	34	51	38
Cases in process	[28]	[41]	[32]
Cases adjourned	[5]	[5]	[4]
TOTAL APPEALS DECIDED	**172**	**205**	**196**
Appeals accepted	57	46	58
Appeals partially accepted	19	19	15
Appeals not accepted	96	140	123
TOTAL APPEALS DECIDED	**172**	**205**	**196**
Percentage accepted	33.1%	22.4%	29.6%
Percentage partially accepted	11.1%	9.3%	7.6%
Percentage not accepted	55.8%	68.3%	62.8%

POST HEARING ACTIVITIES *(cases in process)*	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Cases awaiting further information requested by the panel	4	13	13
Cases awaiting decision	1	6	1
Decision writing	23	22	18
TOTAL	**28**	**41**	**32**

TOTAL WORKER APPEALS	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals accepted	54	43	54
Appeals partially accepted	19	19	15
Appeals not accepted	81	129	115
TOTAL	**154**	**191**	**184**
Percentage accepted	35.1%	22.5%	29.3%
Percentage partially accepted	12.3%	10.0%	8.2%
Percentage not accepted	52.6%	67.5%	62.5%
Number of workers represented by:			
Legal Counsel	13	12	9
Union Representative	20	25	35
Worker Advisor	49	83	89
Advocate	14	14	10
Self Representation	51	54	38
Other	7	3	3

WORKER APPEALS TO CLAIM/REHABILITATION ISSUES	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals accepted	54	43	54
Appeals partially accepted	19	19	15
Appeals not accepted	80	128	115
TOTAL	**153**	**190**	**184**
Percentage accepted	35.3%	22.6%	29.3%
Percentage partially accepted	12.4%	10.0%	8.2%
Percentage not accepted	52.3%	67.4%	62.5%

WORKER APPEALS TO ASSESSMENT ISSUES	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals accepted	0	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	1	1	0
TOTAL	**1**	**1**	**0**
Percentage accepted	0%	0%	0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	100%	100%	0%

TOTAL EMPLOYER APPEALS	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals accepted	2	3	4
Appeals partially accepted	0	0	0
Appeals not accepted	15	11	8
TOTAL	**17**	**14**	**12**
Percentage accepted	11.8%	21.4%	33.3%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	88.2%	78.6%	66.7%
Number of employers represented by:			
Legal Counsel	0	1	1
Advocate	3	3	4
Employer Agent	12	9	7
Self Representation	2	1	0

EMPLOYER APPEALS TO CLAIM/REHABILITATION ISSUES	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals accepted	1	2	3
Appeals partially accepted	0	0	0
Appeals not accepted	11	9	7
TOTAL	**12**	**11**	**10**
Percentage accepted	8.3%	18.2%	30.0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	91.7%	81.8%	70.0%

EMPLOYER APPEALS TO ASSESSMENT ISSUES	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals accepted	1	1	1
Appeals partially accepted	0	0	0
Appeals not accepted	4	2	1
TOTAL	**5**	**3**	**2**
Percentage accepted	20.0%	33.3%	50.0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	80.0%	66.7%	50.0%

TOTAL THIRD PARTY APPEALS	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals accepted	1	0	0
Appeals partially accepted	0	0	0
Appeals not accepted	0	0	0
TOTAL	**1**	**0**	**0**
Percentage accepted	100%	0%	0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	0%	0%	0%
Number of third parties represented by:			
Legal Counsel	1	0	0
Union Representative	0	0	0
Worker Advisor	0	0	0
Advocate	0	0	0
Self Representation	0	0	0
Other	0	0	0

CASE TYPE CLAIM	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals accepted	49	43	54
Appeals partially accepted	15	16	13
Appeals not accepted	83	126	111
TOTAL	**147**	**185**	**178**
Percentage accepted	33.3%	23.2%	30.3%
Percentage partially accepted	10.2%	8.7%	7.3%
Percentage not accepted	56.5%	68.1%	62.4%

CASE TYPE REHABILITATION	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals accepted	7	2	3
Appeals partially accepted	4	3	2
Appeals not accepted	8	11	11
TOTAL	**19**	**16**	**16**
Percentage accepted	36.8%	12.4%	18.8%
Percentage partially accepted	21.1%	18.8%	12.4%
Percentage not accepted	42.1%	68.8%	68.8%

CASE TYPE ASSESSMENT	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals accepted	1	1	1
Appeals partially accepted	0	0	0
Appeals not accepted	5	3	1
TOTAL	**6**	**4**	**2**
Percentage accepted	16.7%	25.0%	50.0%
Percentage partially accepted	0%	0%	0%
Percentage not accepted	83.3%	75.0%	50.0%
TOTAL CASES DECIDED	**172**	**205**	**196**

MOST COMMON ISSUES ADDRESSED	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Entitlement to wage loss benefits (post 1992)	71	72	82
Claim acceptance	42	57	53
Is present condition related to the compensable injury	22	42	38
Entitlement to medical aid payment	21	26	13
Mitigation	9	5	10
Is psychological/psychiatric condition related to the compensable injury	7	1	4
Is worker to reimburse the WCB for overpayment of benefits	6	1	3
Deeming process	6	7	5
Request for Medical Review Panel	6	8	11
Has worker recovered from the compensable injury	5	23	18
Has worker been overpaid benefits	5	1	5
Was the vocational rehabilitation plan appropriate	5	6	3
Entitlement to an increase in the permanent partial impairment award	4	3	4
Is worker entitled to vocational rehabilitation services (retraining)	4	1	1
Are the worker's physical restrictions related to the compensable injury	4	0	2
Discretionary rehabilitation expense	3	6	4
Are assessment premiums payable to the WCB	2	0	0
Is the employer entitled to cost relief	2	1	1
Entitlement to temporary total disability benefits (pre 1992)	2	3	4
Has the permanent partial impairment award been correctly calculated	2	2	4
Should responsibility for surgery be accepted	2	12	6
Other issues	24	37	50
TOTAL ISSUES ADDRESSED	**254**	**314**	**321**

RECONSIDERATIONS UNDER SECTION 60.10 OF THE ACT	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Number of requests decided	21	19	19
Reconsiderations granted	3	5	1
Referred back to the WCB to address new issues identified by the Chief Appeal Commissioner/designate	0	0	0

FILE ACCESS APPEALS	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Worker appeals	3	8	8
Employer appeals	1	4	2
TOTAL FILE ACCESS APPEALS	**4**	**12**	**10**

CRIMINAL INJURIES/VICTIMS' RIGHTS STATISTICS

TOTAL APPEALS	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Appeals accepted	0	1	0
Appeals partially accepted	1	0	1
Appeals not accepted	7	5	3
TOTAL	**8**	**6**	**4**
Percentage accepted	0%	16.7%	0%
Percentage partially accepted	12.5%	0%	25.0%
Percentage not accepted	87.5%	83.3%	75.0%

Service Levels

The Service Level Report was instituted in 1997. This tracking system allows the Office of the Registrar to review the time it takes an appeal to move through the appeal process. Service levels are reviewed at various stages of the appeal process to identify delays and to determine if administrative improvements can be made.

The Appeal Commission personally contacts all interested parties with respect to the scheduling of hearings. Historically, the Appeal Commission has been able to schedule a hearing or review within six weeks of receiving an appeal. It is found, however, that this does not allow sufficient time for the parties to fully prepare.

According to Regulation 279/91, *Appeal Commission Rules of Procedure*, an appeal panel must publish its decision within 60 days following the conclusion of a hearing. A hearing is considered to have concluded once the panel obtains the necessary information to allow it to make a decision.

SERVICE LEVEL STATISTICS *(Based on decisions published as at December 31, 2007)*	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Average time from date appeal received to date of hearing	12.42 wks	16.46 wks	12.76 wks
Average time from hearing date to decision published	11.36 wks	9.62 wks	11.23 wks
[Average time from date of decision to decision published]	*[6.58 wks]*	*[6.91 wks]*	*[6.66 wks]*
AVERAGE TIME FROM DATE APPEAL RECEIVED TO DECISION PUBLISHED*	**23.78 wks**	**26.08 wks**	**23.99 wks**

**Includes all cases where the panel did not make a decision immediately after the hearing/review due to a request for additional information.*

About Medical Review Panels

Medical Review Panels enable the WCB or Appeal Commission to obtain impartial, independent advice on medical matters that affect a worker's right to compensation.

Subsection 67(3) of the Act allows the WCB or Appeal Commission the discretion to refer a medical matter to a Medical Review Panel for an independent opinion. This may occur when a claim is fairly complex and an independent expert opinion is required.

Subsection 67(4) of the Act establishes the right of an injured worker to a Medical Review Panel if there is a difference of opinion on a medical matter between the worker's physician and a WCB medical advisor and this difference affects the worker's entitlement to compensation. A Medical Review Panel must be convened if a difference of opinion, as defined by subsection 67(1) of the Act, exists.

Subsection 67(4.1) of the Act provides that an employer may request that the WCB refer a medical matter to a Medical Review Panel for its opinion. The medical matter must be real and substantial and affect entitlement to compensation.

A Medical Review Panel is comprised of a Chairperson and two panel members. The Minister responsible for the Act appoints the Chairperson and the Alternate Chairperson. The worker and employer select the other two panel members from a list of physicians, provided by the College of Physicians and Surgeons, who specialize in the matter under consideration. In addition, specialist consultants in other fields may be invited to attend and assist the panel.

Physicians who have treated the worker, who examine workers on behalf of the employer, or who have acted as consultants in the treatment of the worker are not eligible to serve on the Medical Review Panel.

The independent nature of the Medical Review Panel process ensures that the medical advice obtained is impartial and is based upon the facts of the case as documented on file and as discovered through the process.

The findings of a Medical Review Panel are considered evidentiary in nature and are not binding upon the WCB or the Appeal Commission.

The Chairperson of Medical Review Panels is Dr. Gary Beazley. The Alternate Chairperson is Dr. Mallory Fast.

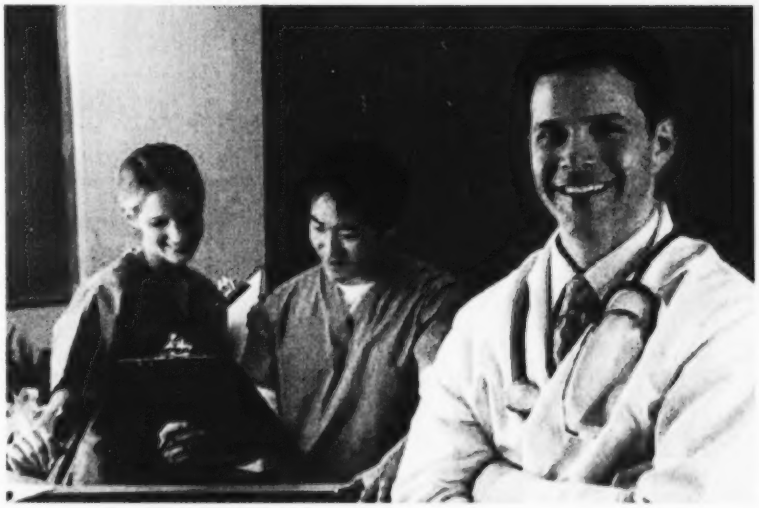
Medical Review Panel Statistics

MEDICAL REVIEW PANELS (MRPs)	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Total MRPs convened	11	5	12
MRPs awaiting scheduling	3	2	3
INITIATED BY:			
Primary Adjudication	6	1	6
Review Office	2	1	6
Appeal Commission	3	3	0
CONVENED UNDER:			
Subsection 67(3)	3	3	3
Subsection 67(4)	8	2	9
Subsection 67(4.1)	0	0	0

MEDICAL REVIEW PANELS CONVENED BY AREA OF MEDICAL SPECIALTY	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Orthopaedic Surgery	9	5	5
Physical Medicine & Rehabilitation	1	0	4
Psychiatry	1	0	0
Ophthalmology	0	0	1
Otolaryngology	0	0	1
Respiratory Medicine	0	0	1
TOTAL	**11**	**5**	**12**

Service Levels

The convening of a Medical Review Panel is a complex process where a panel of specialists and consultants are brought together on a specific day to meet, examine a worker and answer questions placed to them. This involves arranging a time convenient to all parties, the preparation of documents and the publishing of the Medical Review Panel findings.



MEDICAL REVIEW PANEL SERVICE LEVEL STATISTICS	YEAR ENDING 2007	YEAR ENDING 2006	YEAR ENDING 2005
Average time from date of request to date MRP held	17.80 wks	27.29 wks	22.10 wks
Average time from date of MRP to date report is published	4.25 wks	4.74 wks	6.85 wks
AVERAGE TIME FROM DATE OF REQUEST TO DATE REPORT IS PUBLISHED	**22.05 wks**	**32.03 wks**	**28.95 wks**

THE APPEAL COMMISSION
THE WORKERS COMPENSATION ACT OF MANITOBA

600 – 330 St. Mary Avenue

Winnipeg, Manitoba, Canada R3C 3Z5

E-mail: appeal@appeal.mb.ca | Internet: www.appeal.mb.ca

2007

APPEAL COMMISSION & MEDICAL REVIEW PANEL ANNUAL REPORT

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